IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-02-2002

CORAM:

THE HON;BLE MR. JUSTICE K. SAMPATH

S.A.No.1539 of 1989

M. Jayalakshmi Ammal ... Appellant

Vs.

R. Narayanasamy Naidu ... Respondent

! For Appellant: ... Mr.M.K. Kannan
^ For Respondent: ... Mr.P. Peppin Fernando

This second appeal is filed against the judgment and decree dated 1 6-2-1989 made in A.S.No.36/88 on the file of the learned Principal Subordinate Judge, Tirunelveli.

: JUDGMENT
The following two substantial questions of law have been raised for decision in the second appeal:

"1. Whether the lower Court is right in coming to the conclusion that the delivery effected in E.P.No.161/81 on 25-11-1981, when the appellant was not a party in the execution proceedings, will bind her, when especially the appellant continues in possession of the property? And

2.Whether the lower court erred in coming to the conclusion that the delivery recorded on 21-12-1981 will be against the appellant when no actual possession was delivered but only a paper delivery was effected?"

2. I should now itself mention that the Court cannot assume that any delivery through Court is a paper delivery unless overwhelming evidence is available to show that some fraud had been played on the Court and the parties. It has been so held in C. RAMASAMI VS. KURUVA BOYAN AND OTHERS (1991-1 LW 244). (See also GOVINDASWAMY PILLAI VS. MARUDAN (2002-1 LW 113).
3. The appellant took an assignment of an othi after the preliminary decree. It would appear that he objected to the delivery after the final decree came to be passed. The Amin gave delivery to the original mortgagors through their representative. Thereafter, the present suit for a bare injunction came to be filed by the appellant against one Narayanasamy Naidu, who, it is represented, is no more stating that he was a Power of

Attorney Holder of the owners of the property. It is also to be noted here that no steps have been taken to bring on record the legal representatives of Narayanasamy Naidu, though it is claimed that some application has been filed by the learned Counsel for the appellant. The trial Court, no doubt, decreed the suit ignoring the execution proceedings, in which delivery was effected. However, on appeal by the said Narayanasamy Naidu in A.S.No.36/88, the learned Subordinate Judge, Tirunelveli, allowed the appeal and held that pursuant to execution proceedings, the owners got possession of the properties. The lower appellate Court further found that the appellant had not established that he took possession of the property pursuant to the assignment in his favour. This finding is passed on appreciation of evidence on record. I do not find any merit in the second appeal. The first substantial question of law pre-supposes that the appellant was in possession, for which absolutely no material had been produced before the Courts below. In fact, the lower Appellate Court has found that the documents produced on behalf of the appellant were cooked up documents and they had been so done for the purpose of this case. The first substantial question of law is therefore answered against the appellant.

K. SAMPATH,

J.

4. So far as the second substantial question of law is concerned, as already noted, the Court cannot assume that delivery through Court is a paper delivery. Unless there are materials to show that some fraud had been played on the Court and delivery had been stated to have been effected, the presumption under Section 114 of the Evidence Act that official acts are performed regularly will apply. The second substantial question of law is also answered against the appellant. The second appeal fails and the same is dismissed. There will be no order as to costs.

12-02-2002
Index: Yes
IGP

Sd.
Assistant Registrar
/True Copy/

Sub Assistant Registrar

1. The Principal Subordinate Judge,
Tirunelveli (with records).
2. The Second Additional District Munsif,
Tirunelveli.
3. The Record Keeper, V.R. Records,
High Court, Madras.

S.A.No.1539 of 1989